

Bail Slip:- The Appellant/ accused namely Bommaiyan @ Bomma Naicker S/o. Muthu Naicker was directed to be released on bail as per order dated 4.12.2013 and made in M.P.1/13 in CrI.A.No.754/13 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.04.2016

CORAM

THE HONOURABLE MR. JUSTICE M. JAICHANDREN

AND

THE HONOURABLE MR. JUSTICE S. NAGAMUTHU

CRL.A.No.754/2013

Bommaiyan @ Bomma Naicker ... Appellant/Sole
Accused

Versus

The State by
The Inspector of Police
Bhavani Police Station
Erode District. ... Respondent/
Complainant

Appeal filed under section 374[2] Cr.P.C., against the judgment of the learned 4th Additional District and Sessions Judge, Erode District at Bhavani, dated 30.10.2013 in S.C.No.55/10.

For Appellant : Mr.J.R.K.Bhavanantham for
Mr.A.K.Kumaraswamy

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was delivered by S.NAGAMUTHU, J.,]

The appellant is the sole accused in SC.No.55/2010 on the file of the learned Additional District and Sessions Judge, Erode [Bhavani]. He stood charged for the offence u/s.302 IPC. By judgment dated 30.10.2013, the Trial Court convicted him for the offence u/s.302 IPC and sentenced him to undergo imprisonment

for life and to pay a fine of Rs.25,000/-, in default, to undergo rigorous imprisonment for one year. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

2 The case of the prosecution, in brief, is as follows:-

[A] The deceased in this case, was one Mr.Venkitusamy. The appellant is the elder brother of the deceased. The ancestral properties were partitioned among themselves and they were doing agriculture separately in their respective lands. On account of taking water to the respective lands, there were some disputes between the accused and the deceased. This resulted in an enmity between them. The deceased, on few occasions, intimidated the accused and warned him not to live in the village and vacate the village.

[B] On 16.02.2009, at about 17.30 p.m., it is alleged that the deceased came to the house of the accused and quarreled with him and directed him to vacate the village and go elsewhere. This is stated to be the motive for the occurrence.

[C] It is further alleged that on 16.02.2009 at about 19.30 hrs the deceased was proceeding in his Hero Honda Splendor motorcycle. At Alakkattupudur, the accused intercepted him and attacked him with a wooden log. The deceased fell down along with the motorcycle. When the accused repeatedly attacked, the wooden log got broken. Therefore, the accused took out a wooden reaper found near the place of occurrence and repeatedly attacked the deceased until he died on the spot. Then the accused ran away from the scene of occurrence, abandoning the dead body of the deceased and the motorcycle.

[D] P.W.1 is the wife of the deceased and she knows about the dispute between the accused and the deceased. On 16.02.2009, at about 18.30 hrs, the deceased came to the house of the father of P.W.1. He remained there till 19.30 hrs and thereafter, the deceased went away in his motorcycle informing P.W.1 that he was proceeding to his field. Then, at 20.15 hrs., one Palanisamy informed the father of P.W.1 that the deceased was found lying with serious injuries along with the motorcycle near the field belonging to the deceased. Immediately, P.Ws.1 and 2 rushed to the place of occurrence and found the deceased in a pool of blood. He was dead. His motorcycle was also lying there. The wooden log and the wooden reaper with blood stains were also lying by the side of the body. P.W.1 suspected that her husband would have been done to death only by the accused. Therefore, she immediately rushed to Bhavani Police Station and made a complaint under Ex.P.1 on 16.02.2009 at 23.00 hrs. against three persons, namely, the appellant, one Manian and one Raju.

[E] P.W.11, the then Sub Inspector of Police attached to Bhavani Police Station, received the said complaint and registered a case in Cr.No.144/2009 u/s.302 IPC. Ex.P.1 is the complaint and Ex.P.18 is the FIR. He forwarded both the documents to the Court concerned at 08.30 hrs on 17.02.2009 and also to his higher officials.

[F] P.W.12, the then Inspector of Police, took up the case for investigation. He proceeded to the scene of occurrence at about 01.15 hrs on 17.02.2009 and prepared the Observation Mahazar [Ex.P.2] in the presence of P.Ws.6 and 7 and also prepared a Rough Sketch [Ex.P.14]. He also summoned the services of P.W.10-photographer to take photographs at the place of occurrence. He recovered blood stained earth [M.O.1] and sample earth [M.O.2] ; blood-stained chappals [M.O.3] ; blood stained wooden log [M.O.4] ; blood-stained wooden reaper [M.O.5] ; Motorcycle bearing Registration No.TN-36-F-5619 [M.O.6] ; broken glass pieces [M.O.7] and swab of blood taken from the motorcycle [M.O.8] from the place of occurrence in the presence of the same witnesses. The investigating officer examined the witnesses and recorded their statements. He also held inquest on the dead body of the deceased in the presence of Panchayatdars and witnesses and prepared Ex.P.15 [Inquest Report]. He sent the dead body of the deceased for postmortem.

[G] P.W.9, Dr.Pooranachandrika, attached to the Government Hospital, Bhavani, conducted autopsy on the body of the deceased on 17.02.2009 at 09.30 hrs. She found the following injuries:-

"External Injuries:-

- [1] Left ear tear of 4x1cm.
- [2] Cut wound of 3x2x1cm near left eye.
- [3] Skull broken into multiple pieces with protrusion of brain matter.
- [4] Contusion of 8x5cm over left face extending from left eye to jaw.
- [5] Contusion of 4x3cm present over right forearm.
- [6] Multiple abrasionss present over right lower leg, left knee joint and left thigh.

On opening:-

HEAD: [1] Fracture of skull bone into multiple pieces. # of frontal, temporal, parietal and occipital bone. # of 18cm extending from left ear to right ear involving temporal, parietal and frontal bones. Base of skull ## left side facial bones [maxilla and mandible].

INTERNAL ORGANS:-

Stomach:- contains 50 ml of fluid. All other organs normal in size and weight. Hyoid bone:- preserved. The following viscera preserved for

chemical analysis [1]stomach and contents [2]
Intestine and contents [3]sample of liver [4]
kidney [5]Preservative used sodium chloride. [6]
Hyoid Bone [7]blood with filter paper [8]blood
with EDTA."

Ex.P.11 is the Postmortem Certificate. She opined that the death of the deceased was due to shock and hemorrhage due to the injuries found on the body. She further gave opinion that the said injuries could have been caused by a wooden log or a wooden reaper. She also opined that the death would have occurred 14 to 16 hours prior to autopsy.

[H] When the investigation was in progress, it is alleged that the accused appeared before P.W.3, the Village Administrative Officer and made a voluntary confession at 07.30 a.m. on 22.02.2009. P.W.3 recorded the same. Ex.P.4 is the said extra-judicial confession. Then, he prepared a Special Report under Ex.P.5. Along with Exs.P.4 and 5, he took the accused to the Police Station and produced him before P.W.12. P.W.12 arrested the accused at 09.00 hrs on 22.02.2009. The accused made a voluntary confession, wherein he had disclosed the place where he had hidden the blood-stained shirt. In pursuance of the same, he took the police and the witnesses to the place of hide out and produced M.O.9 [blood-stained shirt]. P.W.12 recovered the same under a Mahazar. Then he forwarded the accused to the Court for judicial remand and also handed over the material objects including the cloth recovered from the body of the deceased to the Court for chemical examination. On his request, the learned Judicial Magistrate, Bhavani, recorded the statements of P.Ws.13 and 14 u/s.164 Cr.P.C. On completion of the investigation, he laid charge-sheet against the accused.

[I] Based on the above materials, the Trial Court framed appropriate charges against the accused as detailed in the first paragraph of the Judgment. The accused denied the same. In order to prove the case on the side of the prosecution, as many as 15 witnesses were examined, 19 documents and 14 material objects were also marked.

[J] Out of the said witnesses, P.W.1 is the wife of the deceased and P.W.2 is the father of P.W.1. They have stated about the enmity between the accused and the deceased. They have further stated that on the day of occurrence, at 19.30 hrs., the deceased left the house of P.W.2 for his field in his motorcycle and thereafter, by about 20.15 hrs, they received the information that the deceased was lying near his field. They went to the place of occurrence and found the dead body of the deceased in a pool of blood. P.W.1 has spoken about the complaint made to the police. P.W.3 is the Village Administrative Officer, who has stated that on 17.12.2009, he witnessed the preparation of the Observation

Mahazar and the Rough Sketch prepared at the place of crime and also the recovery of the blood stained earth and the sample earth from the place of occurrence. He has also stated that a blood-stained wooden log and a blood-stained wooden reaper were recovered from the place of occurrence. P.W.3 has further stated that on 22.09.2009, at 07.30 a.m. the accused appeared before him and made a voluntary confession. P.W.4 is the police constable who has stated that he took the dead body from the place of occurrence to the hospital and handed over the same for postmortem. P.W.5 has spoken about the photographs taken at the place of occurrence. P.W.6 has stated that at 08.30 a.m. one Muthunaicker, informed him about the occurrence. P.Ws.7 and 8 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.9 has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.10 has spoken about the chemical examination conducted on the material objects and he has stated that there was human blood found on all the material objects. P.W.11 has spoken about the registration of the case on the complaint of P.W.1. P.W.12 has spoken about the investigation done by him and the filing of the final report. P.Ws.13 and 14, have also turned hostile and they have not supported the case of the prosecution in any manner. P.W.15 has stated about the recording of the statements of P.Ws.13 and 14 u/s.164 Cr.P.C.

3 When the above incriminating materials were put to the accused u/s.313 Cr.P.C., he denied the same as false. However, he did not chose to examine any witness nor marked any documents, on his side.

4 Having considered all the above, the Trial Court convicted and sentenced the appellant/sole accused as detailed in the first paragraph of this judgment. That is how the appellant/accused is before this Court with this appeal.

5 We have heard Mr.J.R.K.Bhavanantham, learned counsel appearing for the appellant and Mr.M.Maharaja, learned Additional Public Prosecutor appearing for the State and we also perused the materials placed on record carefully.

6 As we have already narrated, in this case the prosecution has succeeded in establishing the fact that there was a long standing enmity between the accused and the deceased. The prosecution has also established that at 19.30 hrs on the day of occurrence, the deceased left the house of P.W.2 in his motorcycle for his field. Thereafter, the dead body was found at 20.15 hrs near his field. Now the question is, who caused the death of the deceased by causing injuries. In order to prove that it was this accused who caused the injuries on the body of the deceased which resulted in his death, the prosecution is left only with the extra-judicial confession said to have been given by the accused

to P.W.3, the Village Administrative Officer, as there is no other evidence against him. The learned counsel for the appellant would submit that the said extra-judicial confession cannot be accepted as the accused had no reason to repose confidence in P.W.3 to give such an extra-judicial confession to him after such a long time. We have gone through the evidence of P.W.3 carefully. It is in his evidence that from the day of occurrence, he was actively participating in the investigation along with P.W.12. Thus, P.W.3 appears to be an obliging witness. Apart from this, as rightly contended by the learned counsel for the appellant, P.W.3 is a total stranger to the accused. It is doubtful whether the accused would have reposed confidence in him, so as to confess to his guilt, that too, after such a long time. At any rate, the said extra-judicial confession is doubtful. It is settled law that an extra-judicial confession, if does not inspire the fullest confidence of the Court, then it requires corroboration from any other independent source. In the absence of such corroboration from the independent source, it is not safe to hold the accused guilty, solely based on such a weak piece of evidence. Here, in the instant case, to corroborate the said extra-judicial confession said to have been made by the accused to P.W.3, there is no other evidence to corroborate. Two witnesses examined as eyewitnesses, have turned hostile and they have not supported the case of the prosecution. Further, the Trial Court has relied on the statements of P.Ws.13 and 14 recorded u/s.164 Cr.P.C., as substantive evidence and has used the same to corroborate the extra-judicial confession. In our considered view, the said approach of the Trial Court is illegal because the statement recorded u/s.164 Cr.P.C., is only a former statement that could be used either to corroborate or to contradict the maker of the statement and the same cannot be used as a substantive evidence, so as to corroborate the extra-judicial confession. For these reasons, we are of the view that the conviction and sentence imposed on the appellant cannot be sustained. We hold that the prosecution has failed to prove the case beyond reasonable doubts.

7 In the result, the criminal appeal is allowed. The conviction and sentence imposed by the Trial Court on the appellant for the offences u/s.302 IPC in SC.No.55/2010 vide judgment dated 30.10.2013, are hereby set aside and he is acquitted of the charge leveled against him. The bail bonds executed by him, shall stand discharged. Fine amount, if any paid, shall be refunded to him.

Sd/-
Asst.Registrar (CS III)

/true copy/
Sub Asst. Registrar

AP

To

- 1 The Judicial Magistrate
Bhavani.
2. do thro the Chief Judicial Magistrate,
Erode
- 3 The IV Additional District and Sessions Judge
Erode.
4. do thro Principal Sessions Judge
Erode
- 5 The Inspector of Police
Bhavani Police Station
Erode District.
6. The Superintendent
Central prison,
Coimbatore
7. The District Collector
Erode District
8. The Director General of Police
Mylapore, Chennai-4
- 9 The Public Prosecutor
High Court, Madras.

Copy to

The Section Officer
Criminal Section,
High Court, Madras

1 cc to Mr.A.K. Kumarasamy, Advocate, sr. 25434

WEB COPY Cr1.A.No.754/2013

RSY (CO)
kk 2/6